



**Jack N. Goodman**

Senior Vice President & General Counsel  
Legal & Regulatory Affairs  
1771 N Street, NW • Washington, DC 20036-2891  
(202) 429-5459 • Fax: (202) 775-3526  
jgoodman@nab.org

May 24, 2004

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: WT Docket No. 02-55; ET Docket No. 95-18; ET Docket No. 00-258; IB  
Docket No. 01-185

Dear Ms. Dortch:

On May 22, David Donovan of the Association for Maximum Service Television and the undersigned met with Commissioner Jonathan Adelstein and Barry Ohlson and Johanna Shelton concerning the MSTV-NAB-Nextel BAS Relocation Plan submitted in the above-referenced dockets.

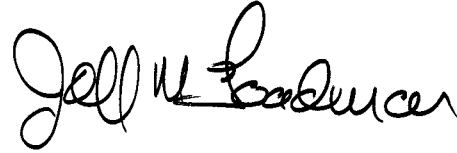
We described the problems with the Commission's existing relocation plan for BAS service and how the relocation plan we proposed with Nextel would address those issues, as well as result in the removal of interference to public safety operations in the 800 MHz band. Specifically, we pointed out that Nextel's agreement – as part of its plan to move to spectrum at 1.9 GHz – to fund the cost of clearing the entire 35 MHz of BAS spectrum that broadcasters will vacate made it possible to develop a relocation plan that minimized the potential for inter-market interference and to avoid stations in any market having to reduce the number of BAS channels. We provided them with a copy of a letter from Chairman Upton and Congressman Dingell pointing out the difficulties with the existing BAS relocation plan. A copy of that letter is attached.

The Commission's and the public's interest in both improved public safety services and on-the-spot coverage of news and sports would thus both be served by the MSTV-NAB-Nextel relocation plan. The plan would also benefit the public interest by the speedy clearing of spectrum that will be used for MSS and AWS services, expediting the availability of those services to the public. We stressed that these benefits could only be assured by adoption of the Consensus Plan that would relocate Nextel to spectrum at 1.9 GHz. We also discussed the implications of the D.C. Circuit's opinion in *Fresno Radio v. FCC*, 165 F.3d 965 (D.C. Cir. 1999), in which the court vacated a decision in which the Commission had imposed rules based on what the court concluded were baseless concerns about spectrum "warehousing."

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Please direct any questions concerning this matter to the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jack N. Goodman". The signature is fluid and cursive, with the first name "Jack" being the most prominent.

Jack N. Goodman

Attachment

cc: The Honorable Jonathan S. Adelstein  
Barry Ohlson  
Johanna Shelton

W.J. "BILLY" TAUZIN, LOUISIANA  
RALPH M. HALL, TEXAS  
MICHAEL BILIRAKIS, FLORIDA  
FRED UPTON, MICHIGAN  
CLIFF STEARNS, FLORIDA  
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RICHARD BURR, NORTH CAROLINA  
ED WHITFIELD, KENTUCKY  
CHARLIE NORWOOD, GEORGIA  
BARBARA CUBIN, WYOMING  
JOHN SHIMKUS, ILLINOIS  
HEATHER WILSON, NEW MEXICO  
JOHN B. SHADEGG, ARIZONA  
CHARLES W. "CHIP" PICKERING, MISSISSIPPI  
VITO FOSSELLA, NEW YORK  
STEVE BUYER, INDIANA  
GEORGE RADANOVICH, CALIFORNIA  
CHARLES F. BASS, NEW HAMPSHIRE  
JOSEPH R. PITTS, PENNSYLVANIA  
MARY BONO, CALIFORNIA  
GREG WALDEN, OREGON  
LEE TERRY, NEBRASKA  
MIKE FERGUSON, NEW JERSEY  
MIKE ROGERS, MICHIGAN  
DARRELL E. ISSA, CALIFORNIA  
C.L. "BUTCH" OTTER, IDAHO  
JOHN SULLIVAN, OKLAHOMA

ONE HUNDRED EIGHTH CONGRESS

**U.S. House of Representatives**  
**Committee on Energy and Commerce**  
**Washington, DC 20515-6115**

JOE BARTON, TEXAS  
CHAIRMAN

March 23, 2004

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BUD ALBRIGHT, STAFF DIRECTOR

The Honorable Michael Powell  
Chairman  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Dear Chairman Powell:

We write to you regarding a proceeding currently under reconsideration by the Federal Communications Commission (FCC) that if left unaltered may seriously impair the ability of local television stations to provide the communities they serve with live, local coverage of emergencies as well as routine news events.<sup>1</sup>

The proceeding at issue would establish a new procedure for removing local stations from a portion of the band now used for Broadcast Auxiliary Services (BAS). Local stations use this band to provide remote electronic newsgathering (ENG), including live local coverage of emergencies, news, and sports. At the present time, local stations across the United States share seven BAS channels (1990-2110 MHz) for ENG. Under the new plan, 35 MHz of this spectrum will be reallocated to Mobile Satellite Service (MSS) and Advanced Wireless Service (AWS), reducing the current number of ENG channels from seven to five.

As part of its decision, the FCC adopted a new ENG band plan based on the assumption that local stations will purchase and begin using new digital "narrow-band" ENG equipment. The Commission anticipates that the new equipment will be more efficient and thus enable local broadcasters to once again operate seven channels even though they now will have less spectrum overall.

In our view, however, the procedures established by the Commission governing the transition from the old to the new band plan and the method by which the stations are permitted to negotiate proper compensation raise several significant policy and practical concerns.

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<sup>1</sup> *Third Report and Order and Third Memorandum Opinion and Order, Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum for Use by the Mobile Satellite Service*, ET docket No. 95-18, (released November 7, 2003).

First, the Commission's decision establishes a one-year mandatory negotiation period for MSS operators to negotiate relocation compensation with local stations in the top 30 markets. These negotiations would take place before stations in these markets had to vacate their two ENG channels. However, television stations in markets outside the top 30, i.e., markets 31-210 (e.g., the 38<sup>th</sup> largest market of Grand Rapids-Kalamazoo-Battle Creek), would be required to first vacate their ENG channels and then try to commence relocation compensation negotiations with MSS operators.

The decision appears to place local television stations in markets 31-210 in an untenable position. Because they must vacate their ENG channels before they negotiate, these stations must either (1) use current equipment and reduce the number of channels they use for electronic newsgathering, or (2) purchase new equipment so they will again have access to seven channels and hope for compensation at some future time. Placing stations in medium and small markets in the position of either losing two channels or spending significant resources to maintain their current coverage appears to be contrary to the public interest.

Second, it appears the Commission has assumed that television stations outside the top 30 television markets can afford to lose two ENG channels because there is lesser demand for news in these markets. This assumption may be incorrect. For example, approximately 37 of the 50 state capitals in the United States, significant generators of news, are located outside the top 30 markets. In many of these markets, the number of television newscasts is equal to or may exceed the number of newscasts in the top 30 markets. Accordingly, the Commission should carefully reexamine this assumption to make sure viewers in these markets do not lose coverage of live local news events and emergencies. Providing live local news coverage goes to the heart of a local station's responsibility to its community and should not be put at risk by new Commission policies.

Third, operational problems may result from the new procedures required by the Commission in this proceeding. Under the FCC's plan, television stations in the top 30 markets would negotiate with MSS operators. If the negotiations were successful, these stations would acquire new equipment and operate under the new "narrow band" seven-channel ENG band plan. Given financial limitations in smaller markets, and lacking the ability to negotiate up-front, stations in markets 31-210 may decide to remain with the existing five channel band plan and lose two ENG channels.

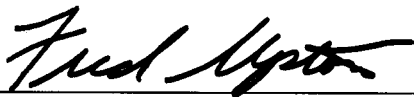
The likely result is that local stations in adjacent markets may be operating with inconsistent ENG band plans. We understand that local stations generally coordinate ENG frequency use to avoid interference. But we further understand that, according to recent technical filings, coordination may be problematic when different ENG band plans are employed. So significant interference to ENG transmissions may result when top 30 market television stations with new narrow-band equipment attempt ENG operations in smaller markets that are still using the old ENG band plan. This could pose a significant problem for states like Michigan that have large market stations that seek to provide live remote coverage in their own state capitals that are not top 30 markets. The reverse situation would also appear to be a problem.

Moreover, operational problems could result under the new rules should a disaster or other emergency take place near the border of two local markets where the stations in one market are utilizing the new band plan and the second market is operating on the old band plan. For example, what would happen if a plane headed to Detroit Metropolitan Airport crashed in Monroe, Michigan, an area between Detroit, Michigan, and Toledo, Ohio, as happened a few years ago? If the stations in Detroit, a large market, had been operating on the new ENG band plan and the stations in Toledo, a smaller market, had been operating on the old ENG band plan, the local reports from the crash scene may never have been received by the Detroit and Toledo stations due to interference caused by inconsistent band plans.

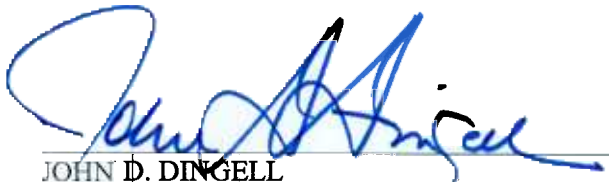
As you review the various petitions that have been filed, we urge you to consider the effect that the FCC's decision will have on the ability of broadcasters from both large and smaller markets to utilize BAS frequencies to deliver live, local news to the public. The coverage and delivery of local news events is integral to the concept of localism for broadcasters. And live, on-the-spot coverage of emergency situations has become a critical component of our national security policy. The American public should not lose real time information from the scene of a natural or man-made disaster because of an insufficient number of ENG channels or interference due to inconsistent ENG band plans.

We understand that spectrum decisions are extremely difficult and that the FCC has sought to establish MSS service for some time. In balancing these interests, however, relocation and compensation procedures should not jeopardize the ability of local stations to fulfill their primary role – to provide live local coverage of news events. Accordingly, we recommend that the Commission review its decision and take the necessary steps to ensure that the ability of television licensees to provide the public with timely news reports is not compromised.

Sincerely,



FRED UPTON  
CHAIRMAN  
SUBCOMMITTEE ON TELECOMMUNICATIONS  
AND THE INTERNET



JOHN D. DINGELL  
RANKING MEMBER  
COMMITTEE ON ENERGY AND COMMERCE

cc: The Honorable Joe Barton, Chairman  
Committee on Energy and Commerce

The Honorable Edward J. Markey, Ranking Member  
Subcommittee on Telecommunications and the Internet

The Honorable Michael Powell  
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The Honorable Kathleen Abernathy, Commissioner  
Federal Communications Commission

The Honorable Jonathan Adelstein, Commissioner  
Federal Communications Commission

The Honorable Michael Copps, Commissioner  
Federal Communications Commission

The Honorable Kevin Martin, Commissioner  
Federal Communications Commission